IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

(SUO MOTO) CONTEMPT PETITION NO. 189 OF 2005
IN
Int. Notice No. 660/ 2005
IN
R.A.D. & E. SUIT NO. 1155/1905 OF 2002

Shri V.D.Kavatkar, Registrar,
Small Causes Court, Bombay. .. Petitioner.

V/s.

1. Fatima Huseni Radhapurwala,
Age 63 years, Occ.Housewife,
22, Lucky Mansion, Mohammad
Ali Road, Pydhuni, Mumbai-03.

2. Anwar Usman Moulvi
Age 37 years, Occ. Business,
57, Kazi Street, Kazi Mohalla,
Ground Floor, Mumbai-400 003.

3. Madhukar Mohanlal Mehta .. Respondents.
Age 54 years, Occ.Service,
377, Chira Bazar, Kalbadevi,
Mumbai -400 002.

Mr.Jimmy Mehta with Mr.H.G.Bhambhani for the Petitioner/ Original Plaintiff.

Miss R.H.Bhandari i/by J.P.Thakkar for Respondent No.1.

Mr.J.S.Kini for the Respondent No.2.

CORAM : S. A. BOBDE, J.

DATED : 27TH & 28TH AUGUST, 2007.

ORAL JUDGMENT :-

. This is a Reference by the Small Causes Court at Mumbai under the Contempt of Courts Act, 1971.

2. An application was made by the original plaintiff in the suit for possession and upon hearing the respondents, the Small Causes Court made the reference of the orders dated 10th & 16th March, 2005 passed in Int.Notice No. 660/2005 in R.A.D.& E. Suit No. 1155/1905/2002 of the Small Causes Court, Mumbai.

3. In the course of the suit, the original plaintiff has alleged contempt of injunction order dated 13th & 14th of October, 2003 passed by the Small Causes Court, Mumbai in Interim Notice No.4877/2002 in R.A.D. & E. Suit No. 1155/1905 of 2002 taken out in the suit, which reads as follows :

. "The notice is partly made absolute.

Prayer (a) is granted i.e. Registrar of this Court is hereby appointed as Court Receiver in respect of the shop premises i.e. Shop Premises viz. 72/74, first floor, Room No.1, Bhaji Pala Lane, Mumbai - 400 003, with all powers under Order 40 Rule 1 of CPC.

The Court Receiver is hereby directed to take symbolic possession of the suit premises from the defendant No.2.

The defendant No.2 will be the Agent of the Court Receiver in respect of the suit premises and will pay the rent to the Court Receiver and in turn the Court Receiver to pay the rent to the landlord in respect of the suit premises.

The defendants, their agents and servants are hereby restrained by an order of temporary injunction from parting with possession or

dealing and disposing in any manner of the suit premises vix. Shop Premises viz. 72/74, first floor, Room No.1, Bhaji Pala Lane, Mumbai 400 003, till disposal of the suit.

Prayers (b),(c), (e), (f) and (g) are rejected..

In the circumstances of the case no order as to costs."

4. The suit is for recovery of four rooms totally admeasuring about 800 sq.ft. area. According to the original plaintiff he is a tenant of the respondent No.1. However, the respondent No.2 took forcible possession of the premises and has occupied it. In a notice of motion taken out by the plaintiff, the trial court passed an order of injunction in terms set out above.

5. In the application for taking action under the Contempt of Courts Act, the original plaintiff has alleged that the respondent No.2 has parted with the possession of the premises in breach of the order of injunction. Earlier, the respondent No.2 was carrying on business on his own. He has afterwards let out the premises to various persons by allowing them to do business in the cabins specially constructed.

6. The respondent No.2 denied the allegations. The trial court after hearing the respondents came to the

conclusion that the respondent has parted with the possession of the premises. The trial court observed that in his application for opposing the notice of motion, there was no mention of others in possession of the premises. He had claimed that he was doing the business of timber. The trial court took into account affidavits of the plaintiff and his nephew and certain visiting cards of the persons doing business in the premises.

7. The trial court also considered affidavits of the persons who claimed to be functioning as commission agents of the respondent. By a detailed order, the trial court has come to the conclusion that the respondent No.2 has parted with the possession of the premises in violation of the court's order.

8. Mr. Mehta, referred to the affidavit of plaintiff's nephew and the visiting cards of the persons who are said to be doing business in the premises. Mr. Kini, the learned counsel for the respondent No.2 interalia relied on the affidavits of the persons who are said to be not in occupation of the premises but are acting as commission Agents of the respondent No.2.

9. The affidavits of other persons are vague. They

merely state that they are acting as commission agents without disclosing the period from which they are acting as commission agents. However, the visiting cards of the said persons show that the address of their place of business is the suit premises. More important, the business mentioned on the visiting cards are not the Timber business of the respondent No.2. The variety of business are mentioned there. This evidence shows that the said persons were occupying the suit premises in question.

10. More over, the respondent No.2 himself clearly stated in his affidavit in reply to the notice of motion that he was occupying the premises mainly for the purpose of business of Timber and that he alone was so occupying the premises. Significantly, he has not stated that the so called commission agents also function or work in the same premises.

11. The Court Receiver’s report show that these persons were found working or functioning in the premises since a few months earlier of his giving the report i.e. clearly after the order of injunction.

12. In reply to the motion for an injunction, the contemnor has averred that he is in occupation of the

premises and that he is doing business of timber on the commission basis. He had further stated in the affidavit that he is in occupation, possession and enjoyment of the premises in his own right. There was no mention whatsoever of the existence of any cabins or carrying out of any other business from the cabins by any other person. The contemnor had further stated that there is no apprehension that he would create any third party right in respect of the suit premises. However, original plaintiff noticed certain business boards on the premises and applied for taking action against the respondents. The contemnors filed an affidavit and the trial court has referred the matter after hearing the parties.

13. At the outset it may be noted that Mr. Mehta, the learned counsel for the original plaintiff has stated that he does not press any grievance against the contemnor No.1 Fatima Huseni Radhanpurwala, having regard to gender and age. Mr. Mehta states that original plaintiff does not wish to press charges of contempt against Madhukar Mohanlal Mehta, the contemnor No.3. Thus the case is required to be considered only in respect of contemnor No.2 - Anwar Usman Moulvi, who is party to the injunction.

14. Considering the merits of the matter, it is clear that it is not possible to determine the exact time when the cabins were put up in the suit premises and when the third parties were allowed to occupy the respective cabins. It is, however, clear from the evidence on record that the findings of the trial court are based on the cogent evidence. Earlier when the contemnor was resisting the injunction, he had made no mention of any business other than that of timber being carried out in the premises. In reply to the charge of contempt, he pleaded that he constructed 12 cabins, not mentioned earlier, which are temporary in nature. He mentioned that he had various agents to work for him on commission basis and those agents do not have any access in the premises.

15. Several people purported to be the commission agents filed affidavits which are almost identical in terms that they are working as commission agents and carrying on business on its own. They have further stated that they are doing business on commission basis and not having any key or possession of the cabins. It is, however, difficult to accept these facts as the visiting cards filed by these agents do not bear the name of the contemnor. Indeed there is no evidence that before the order, the defendants had several types of

businesses and a separate sales tax number, or Municipal licences or entry in the sales tax certificate in respect of other business. The affidavits of the so called commission agents do not show when they were appointed as commission agents and since when they are acting as commission agents in the year 2002 i.e. before the order. Thus I am in agreement with the finding of the learned trial court and also, having heard the arguments and perused the evidence, that the contemnor had inducted several persons in breach of the order of injunction dated 14.10.2003 by parting with possession and delivery of the suit premises to the third party, beyond any reasonable doubt.

16. At one stage, it was argued on behalf of the contemnor that the order which is said to have been breached is not actually breached because the agents of the contemnor have not parted with possession of the property. According to the defendant, the order restrains the defendant’s agent from parting with possession of the property. His agent i.e. commission agents not having parted with possession of the property, it cannot be said that the order is breached. Further, in any case, there is no breach of the order because the defendants have not partied with possession of the property but the property is in possession of his

commission agents. This argument must be rejected in its entirety. However, it is important to note that in the suit which was filed for restoration of the possession the contemnor did not disclose that the premises are being occupied by several persons in their respective cabins in which-ever capacity. It is usual for the courts to direct the defendants, their agents and servants to do something or refrain from doing something. Such a direction cannot be understood to interpret that the direction is only to the agents to do or not to do something while absolving the defendants responsibility to carry out the order.

17. In the circumstances, I am of view that the contemnor has wilfully breached the order of injunction. However, it must be noted that the contemnor has tendered an unconditional apology in writing. Along with the apology, prior to the hearing of this contempt petition, the contemnor has removed of his so called agents from the premises and restoring the possession with him being in sole occupation of the premises. Mr.Kini, the learned counsel for the respondent No.2, stated that the apology has been tendered because the respondent has committed breach of the order, which was not deliberate but was under a bonafide impression. Since the purpose of the injunction order was to prevent

the plaintiff from being deprived of the fruits of the decree at the hands of the contemnors and the third person and that situation having been made possible to restore again, I am of view that it would be proper in the interest of justice to accept the apology.

18. Mr. Mehta, the learned counsel for the original plaintiff submitted that the apology must be rejected on the ground that it is not bonafide because it was tendered late and he relies on the judgment of the Supreme Court in **M.C.Mehta vs. Union of India and Ors., (2003) 5 Supreme Court Cases 376,** in which their Lordships have observed that an apology is not a weapon of defence to purge the guilt of the contemner and if it is tendered at belated stage to escape punishment, it may be rejected. Mr. Mehta also relied upon the judgment of the Supreme Court in **Mulkh Raj vs. The State of Punjab (AIR 1972 Supreme Court 1197)** and in particular, on the observations to the effect that if the apology is offered at the time when the contemner finds that the court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward.

19. The aforesaid observations, however, do not appear to apply with full rigour to the facts of the

present case. In the present case, even before hearing of this contempt petition, the respondents have removed the presence of the offending persons from the suit premises and also tendered the apology, which in my view in the interest of justice, should be accepted and is hereby accepted.

20. However, at this stage Mr. Mehta, the learned counsel for the original plaintiff submitted that in the interest of justice all the respondents having been found to have acted in breach of the order, there is no reason why the respondent should be allowed to continue, acting as an agent of the court receiver for which he was appointed under the order of the court dated 14.10.2003 and eventually by the Registrar on 20th April, 2005.

21. Mr.Kini, the learned counsel for the contemnor submitted that this court has no powers to pass ancillary orders while exercising the contempt jurisdiction which may altogether be the subject of an independent proceedings before this court. In fact according to the learned counsel, the order to appoint the respondent No.2 as agent of the receiver was challenged by the original plaintiff before this court by way of a writ petition and this court did appoint the

defendant No.2 as an agent of the receiver inspite of being the contemnor. According to him, therefore, an order cannot be made by this court in exercise of the contempt jurisdiction for vacating the receivership of the respondent contemnor. Now, admittedly such a prayer was made before the trial court in the presence of the contemnor which was not allowed by the trial court. It is, therefore, clear that the contemnor has notice of such a prayer having been made by the original plaintiff. As regards propriety of such an order, I am of view that there is no merit in the contention that this court in exercise of a contempt jurisdiction cannot make such order because such an order was not made by this court in exercise of writ jurisdiction in respect of the appointment of the receivership. At that stage the contemnor was not found as having breached the order of the court and therefore, there was no occasion to pass such an order.

22. Mr.Kini, the learned counsel for the contemnor relied on the decision of the Supreme Court in **Director of Education, Uttaranchal & Ors. vs. Ved Prakash Joshi & Ors. (2005) 6 Supreme Court Cases 98,** in which the Supreme Court observed that all that the contempt courts are concerned, whether the decision in question has been complied with or not and that it cannot test the

correctness or otherwise of the order, traverse beyond it or give additional directions. This decision has no application to the facts of the present case since the prayer for removing the contemnor from receivership of the court receiver does not tantamount to test the correctness of the order or traverse beyond it. Similarly, other decision of the Supreme Court in **Jhareswar Prasad Paul & Anr. vs. Taraknath Ganguly and Ors. (2002) 5 Supreme Court Cases 352** is concerned, it has no application with the present case because the Supreme Court has observed there that a contempt court has to see whether there was disobedience of court's judgment or order and not what the judgment or order should have contained. These observations were made in different set of circumstances and do not apply to the present case.

23. As regards powers of the courts to do justice while exercising contempt jurisdiction, have been considered by a Full Bench of the Madras High Court in **Vidhya Charan Shukla vs. Tamil Nadu Olympic Association & Anr., reported in 1991 CRI. L.J. 2722.** The Full Bench had referred to several jurisdiction of this court under Article 215 and 225 of the Constitution of India and observed in paragraph 46 as follows :

> " ..... There have been cases before several Courts in which when faced with situations that some order or direction was violated and the violation resulted in grave and serious injury, the Courts took the view that the Code of Civil Procedure is not exhaustive. There are cases which say that if remedy to do justice is not provided for in the Code or any other Act, the High Court must not fold its hands and allow injustice to be done."

The Full Bench of the Madras High Court also observed that a learned Judge of the Calcullta High Court **in Bhagat Singh vs. Dewan Jagbir Sawhney (AIR 1941 Cal.670)** was of the following view (para 47) :

> That the law cannot make express provisions against all inconveniences and that the Court had, therefore, in many cases where the circumstances warranted it, and the necessities of the case required it, acted upon the assumption of the possession of an inherent power to act ex debito justitiae and to do that real and substantial justice for the administration of what it alone exists.

This view was approved by the Supreme Court in **Manchar Lal vs. Seth Haralal (AIR 1962 SC 527).**

24. Further, in paragraph 52 of the judgment, the Full Bench of the Madras High Court observed as follows :

> "52. One important aspect of the case since there has been some arguments before us about it is, can it be said that for a breach of the

injunction by a party or a stranger for aiding or abetting the breach alone, the Court's inherent power can be exercised and not in a case of a third party, who had the knowledge of the order, but decided to violate it, who may be guilty of obstructing the administration of justice still, will not be subject to any restitution order? This we feel needs no detailed discussion. No person can obstruct the path of justice. No one can escape by committing a gross and violent obstruction to the implementation of the order/direction of the Court. The only question relevant in such a situation will be, whether the right which such a person has pleaded has been acquired by the violation of the order or had existed in him independently unaffected by the injunction. There can be no other law than one stated above that no person should be allowed to reap the benefits of a wrong done by him and thus wehther he is a guilty of civil contempt or criminal contempt, the wrong doer can always be subjected to the inherent jurisdiction of the Coiurt, which is not different for the civil or criminal contempt. Whether it is a civil contempt or a criminal contempt, it is a contempt of Court and the disobedience of the order in any case is an obstruction in the administration of justice. It has been urged however that any order of restitution or restoration of the status quo ante by the order of the Court should be as a consequence of the commission of the breach having been established. Reference has been made to certain procedure adopted by Courts in England that where judgments or orders of the Court are disobeyed, they are enforced by writ of sequestration or an order of committal. This however should not detain us beyond stating that even if it is assumed that the Court shall make an order of restitution or restoration of the status quo ante as a consequence of the finding of guilt of disobedience, if there can be such a power, there can always be ancillary to it the power ot make an interim order to the said effect subject to the final determination of the case."

25. On the redressal of the damage or injury the

Full Bench of Madrass High Court observed as follows in paragraph 55. :

> "55. There are three possible stages, where to redress damage or injury, the Court may decide to grant a mandatory injunction in a case in which a certain injunction is violated.
>
> (1) there can be an injunction apprehending further contempt, unless further order is not made to stop, the violation will continue or perpetrate.
>
> (2) Final adjudication of the damage is postponed and a temporary but mandatory order is made, and
>
> (3) Damage or injury is finally determined, and steps taken to effectuate the order."

The Full Bench further referred the following observations of the Supreme Court in R.P.Ltd., vs. Proprietors, Indian Express Newspapers, Bombay Pvt.Ltd., AIR 1989 SC 190.

> ..... The law of contempt must be judged in a particular situation. The process of due course of administration of justice must remain unimpaired. Public interest demands that there should be no interference with judicial process and the effect of the judicial decision should not be pre-empted or circumstanced by public agitation or publications. It has to be remembered that even at turbulent times through which the developing countries are passing, contempt of Court means interference with the due administration of justice."

26. Mr. Mehta, the learned counsel for the original

plaintiff also relied on the judgment of the Supreme Court in **the Supreme Court Bar Association vs. Union of India & Anr. (1998) 4 Supreme Court Cases 409.** The Supreme Court referred to the Halsbury's Laws of England, 4th Edition, and their Lordships reproduced paragraph 100, which reads as follows :

> "100. Other remedies. -- As a further alternative to ordering committal, the court may, in its discretion, adopt the more lenient coiurse of granting an injunction to restrain repetition of the act of contempt. The court may also penalise a party in contempt by ordering him to pay the costs of the application." .....

In paragraph 34 the Supreme Court observed as follows :

> "34. The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any coiurt of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prisoin for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaknig may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of propery

> in a landlord-tenant dispute. Apart from punishing the contemner, the court to maintain the majesty of law may direct the police force to be utilised for recovery of possession and burden the contemner with costs, exemplary or otherwise."

27. It is true, as pointed out by Mr. Kini, the learned counsel for the contemnor that the Supreme Court has observed, after incorporation of types of punishments in case of an established contempt that have been specified in the Contempt of Courts Act, 1971, that no new type of punishment can be created or assumed. However, it cannot be said that making an order of injunction or a change in the agentship of a receiver, would be an order which imposes a new punishment. That order is an order to punish a wrong doing and to prevent the possibility of a further wrong doing and it may not be considered as the creation of a new type of punishment for contempt of court.

28. Now in the present case, the contemner breached the injunction order after he was appointed as an agent of the court receiver by order dated 13th & 14th October, 2003. He actually took charge as agent of the court receiver on 20th April, 2005. Indeed it would not have been possible for him to exploit the situation and part with possession of the premises for a commercial

gain but for the fact that he was in a possession as an agent of the court receiver. In fact no party would have agreed to pay for using the said premises unless the contemnor had some semblance of authority and possession. In the circumstances, it is clear that the contemner can not be left to scrupulously avoid the judicial processs and it is difficult to rely on his future conduct. Even accepting his undertaking may not serve the purpose since he appears to have inducted those persons in breach of the injunction order. In the circumstances of the case, I am of view that the contemner forfieted the trust with which he was appointed as agent of the receiver and ought to be deprived of his status as an agent.

29. In view of the law laid down in the decided cases, discussed above, I am of view that this court has sufficient power to ensure the due administration of justice and in order to do justice has ample powers to pass order in the nature of grant of injunction or eviction, appointment or removal of receivers and their agents. It is the duty of the court to exercise these powers *ex-debito justitiae* in proper cases. I am of view that the present case is one such an appropriate case where inherent powers of this court deserve to be exercised. I accordingly direct that the contemner’s

status as an agent of the court receiver shall be removed and that the receiver shall appoint any other person who is willing to act as an agent, including the plaintiff, having regard to be the agent on payment of royalty and security on usual terms.

30. The contemnor is hereby convicted of a civil contempt of court. However, his apology having been accepted he is not sentenced to undergo any punishment. However, he is removed from receivership as agent of the court receiver.

31. Rule against Respondent/Contemner No.1 is hereby discharged.

32. At this stage Mr.Kini, the learned counsel for the contemner prays a stay of this order. The order is stayed for a period of two weeks from today.

33. Upon a prayer for extension of stay on 06.09.2007, the stay is extended by two weeks from 10th September, 2007.

34. Order accordingly. Certified copy expedited.

(S.A.BOBDE,J.)

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